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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 695

THE UNITED STATES OF AMERICA,
Appellant,

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, OFFICER THEREOF

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

APPELLEES' STATEMENT AS TO JURISDICTION

CHARLES J. MARGIOTTI,
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FRANK DONNER,
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DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

No. 167-48

UNITED STATES OF AMERICA,

vs.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, OFFICER THEREOF

APPELLEES' STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States as amended, the United States has submitted its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction to review the judgment of the district court entered in this cause on March 17, 1948, dismissing the indictment filed against the defendants.

Jurisdiction

The Appellees do not contend that the Supreme Court lacks jurisdiction on appeal to review the judgment of the district court entered therein.

Statute Involved

Section 313 of the Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act of 1947 (Public Law 101, 80th Cong., 1st sess., c. 120), provides:

> Sec. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Nature of the Issue and the Ruling of the District Court

The defendants herein were indicted for violation of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947.

The indictment recites *inter alia* that the defendant Congress of Industrial Organizations caused to be published in the "CIO NEWS", a publication owned and published by said defendant, an article in support of a political candidate for election to a federal office.

The article announced that a special Congressional election was to be held in the City of Baltimore; that one of the candidates had been officially approved and endorsed by the CIO Political Action Committee for the State of Maryland and that the opposition candidate was known for his anti-union views and activities.

The article further set forth that the Congress of Industrial Organizations was requested by representatives of its members within the Congressional District involved to urge members of CIO unions to cast their votes for the favored candidate, Judge Garmatz.

The article expressed the view that the Labor-Management Relations Act, 1947, is a bad law and that its evils had become well known to members of defendant Congress of Industrial Organizations throughout the length and breadth of the country.

The article expressed the view of members of defendant Congress of Industrial Organizations in the City of Baltimore that Judge Garmatz would act for the repeal of the law, an objective deemed essential by defendant Congress of Industrial Organizations in the public interest.

The article, on behalf of the members of defendant Congress of Industrial Organizations in Baltimore, urged that all members residing and voting in the Congressional

District in question cast their votes for Judge Garmatz and expend every effort to the end that others might do likewise.

The indictment recites that defendant Congress of Industrial Organizations made certain expenditures in publishing and circulating the issue of the "CIO NEWS" containing the aforesaid article.

The indictment further recites that defendant Congress of Industrial Organizations caused one thousand extra copies of the "CIO NEWS" containing the aforesaid article to be circulated in the Congressional District in question.

Defendant Philip Murray was indicted for the sole reason that he consented to the activity of the defendant Congress of Industrial Organizations set forth above.

On February 20, 1948, defendants filed with the district court a motion to dismiss the indictment on the ground that the provisions of Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Labor-Management Relations Act, 1947, are unconstitutional and violate the First, Fifth, Sixth, Ninth and Tenth Amendments to the Constitution of the United States.

The district court held that the indictment charged an offense under Section 304 of the Labor-Management Relations Act, 1947, but that the statute, in so far as it prohibits the expenditure of funds of a labor organization in connection with a federal election is, on its face, an unconstitutional abridgment of defendants' rights of freedom of speech, freedom of press and freedom of assembly.

With respect to other contentions of the defendants, the court stated:

> "Defendants contend that the legislation is vulnerable also as an arbitrary discrimination against labor organizations in violation of the Fifth Amendment, and because it does not fix an ascertainable standard of guilt, as required by the Fifth and Sixth Amend-

ments. I do not deem it essential to decide these questions, since I have concluded that the challenged provision of the statute is invalid because of abridgment of rights guaranteed by the First Amendment."

The Nature of the Question

The issue presented by the appeal is one of transcendent importance. That issue is whether the Congress may constitutionally make it a crime for a labor organization to publish and circulate a newspaper endorsing a candidate for federal office. A further question posed by this case is whether the president of such a labor organization commits a crime when he consents to the publication and circulation of such a newspaper.

Every case in which the Supreme Court is called upon to vindicate civil rights and to overthrow a statute invading the liberty of the individual presents issues of more than routine importance. In this case, however, a peculiar significance attaches to the prohibition for three basic reasons:

1. The right which Congress has invaded is the right to a free press. Few rights in our society are more important.

Far less serious invasions of the freedom of the press than that presented by the statute have been repeatedly condemned by the Supreme Court as inconsistent with the basic rights guaranteed by the Constitution.

2. The restraints involved present a compelling case for judicial intervention because they seek to bar access to the political process. The statute prevents the exercise of civil rights precisely in that area where such exercise is most vital.

3. The injuries thus imposed would be profound if imposed at any time and upon anybody. They are particularly serious when imposed upon defendants, for defendants are

an unincorporated association and an officer thereof who seeks to speak in the political arena for millions of its members who have joined together for the precise purpose of achieving through group action what as individuals they are powerless to do. Moreover, the restraints are imposed on the eve of an election which presents issues—of peace and war, prosperity and depression, security and want—of tremendous importance to working people of America whom defendants represent.

We submit that the district court properly struck down the statute as an unconstitutional invasion of defendants' freedoms. We urge that this Court act promptly to affirm the decision of the district court so as to afford defendants an adequate opportunity to exercise their political rights in a meaningful and effective way, namely, in connection with the momentous election which is now pending.

Respectfully submitted,

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FRANK DONNER,
Attorneys for Defendants.